

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 21, 2007

**JOY L. RANGE v. JENNIE E. BAESE, ET AL.**

**Appeal from the Circuit Court for Fentress County  
No. 8017     John D. McAfee, Judge**

---

**No. M2006-00120-COA-R3-CV - Filed January 22, 2008**

---

This appeal stems from the trial court's granting of summary judgment in favor of two defendants in a lawsuit alleging defamation and tortious interference with employment. Because the record does not allow this Court to determine the basis for the trial court's decision, we vacate and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated and  
Remanded**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Robin S. Kuykendall, Knoxville, Tennessee, for the appellants, Joy L. Range and the Estate of Joy L. Range.

G. Earl Patton, Crossville, Tennessee; Mark E. Walker, Jamestown, Tennessee, for the appellees, Jennie E. Baese and Brenda Anderson.

**OPINION**

The plaintiff in this lawsuit, Joy Range, was an employee of East Fork Stables, Inc. ("East Fork") and the Estate of Bruno Gernt, Inc. ("the Estate"). Both of these corporations were named as defendants in the complaint, but Ms. Range ultimately agreed to dismiss her claims against them. The other two defendants, Jennie E. Baese and Brenda Anderson, are the only defendants left for purposes of this appeal. Ms. Range asserted causes of action against Ms. Baese and Ms. Anderson for defamation, tortious interference with her employment contract, and conspiracy to interfere with her employment. After the initiation of this appeal, Ms. Range died, and her estate is now pursuing her claims.

Ms. Range first worked for the Estate and East Fork as an accountant. In 2001, she became the manager of East Fork and a consultant for the Estate. In her capacity as the manager of East Fork, Ms. Range supervised Ms. Anderson, who worked there as a housekeeper. Ms. Baese is a

stockholder in the Estate, a closely-held corporation whose stockholders are direct descendents of Bruno Gernt. East Lake is a subsidiary of the Estate. Each corporation is controlled by a board of directors. There is also a voluntary Family Council composed of members of the Gernt family that communicates with the Estate's board.

The parties seem to agree that on or about July 11, 2003, Ms. Range posted on a bulletin board at East Lake an e-mail received on the office computer from someone named "Brenda Anderson." The e-mail included the statement that, "I've been single for a while and I miss being with a man." The sender described herself and invited interested persons to contact her. When she saw the e-mail displayed, Ms. Anderson became upset, stating that she had not written the e-mail. In her complaint, filed on December 22, 2003, Ms. Range alleged that Ms. Anderson contacted "Mr. Gernt" about the e-mail posting and stated that this act amounted to sexual harassment. The complaint further alleges that Ms. Anderson had previously talked to Ms. Baese concerning a disciplinary action that Ms. Range had taken against her. The complaint does not detail the entire sequence of events, but alleges that, "The Estate Board of Directors, acting on false statements of sexual and/or other harassment by defendants Anderson and Baese, and by Karen Potter and Bonnie Ledbetter, demanded her termination . . . ."

All of the defendants answered Ms. Range's complaint. The trial court's order indicates that both Ms. Anderson and Ms. Baese (as well as the two corporate defendants) filed motions for summary judgment. None of these motions, however, appear in the record. The record includes a Memorandum of Law in Support of Motion for Summary Judgment filed on behalf of Ms. Anderson on March 24, 2005. Immediately after that memorandum, there is an affidavit of Jennie Baese sworn to on March 25, 2005, and labeled "Exhibit 4." Next, there appears an affidavit of Gerald W. Gernt sworn to on March 28, 2005, and labeled "Exhibit 5." Ms. Baese's affidavit includes the following statements:

7. I did express displeasure with the Plaintiff Joy Range on or about July 18, 2003, to fellow stockholders, at the Family Council Meeting on that date, as I felt at that time that it was in the interest of the Estate of Bruno Gernt and its subsidiary, East Fork Stables, that Plaintiff, Joy Range be fired.
8. The only statements I have made concerning the Plaintiff, Joy Range, were made to either members of the Board of Directors of the Estate of Bruno Gernt or to fellow stockholders who shared an interest in the continued prosperity of the Corporation.

A hearing was held on all four defendants' motions for summary judgment on June 28, 2005. The proceedings consisted of arguments by the attorneys, with most of the discussion focusing upon the claims against the two corporate defendants. Both the attorneys and the trial judge made reference to depositions of the parties. These depositions are not in the record. The trial judge questioned the attorneys for Ms. Baese and Ms. Anderson about their positions and granted their summary judgment motions. He then granted summary judgment in favor of both corporate defendants on all claims except a retaliatory discharge claim. When asked by counsel for Ms. Range

to give “findings and conclusions,” the trial judge stated that he had already given findings and conclusions in the record. Addressing plaintiff’s counsel, the trial judge also stated:

The Court itself, the Court again bases a lot of this upon, and the Court cannot ignore the issue of the fact that your client comes into this matter with unclean hands. In fact, all this seems to me to have been precipitated by the fact that she’s posted an e-mail that was not in favorable light in reference to Ms. Anderson. This has all started because of your client. There’s been no claim of defamation as far as this Court is concerned against Ms. Baese or Ms. Anderson in this case. Now, the facts are the facts as what’s been presented on the records. There is no bases [sic] for these cases to go any further.

In separate orders regarding Ms. Baese and Ms. Anderson (dated July 18, 2005, and July 25, 2005), the trial court used language similar to the following (from the order concerning Ms. Baese): “Having reviewed the affidavits, briefs and memorandums of law filed by the parties and having heard the arguments of the parties’ respective attorneys, this Court is of the opinion, and it is therefore ORDERED, ADJUDGED and DECREED that there exists no genuine issue of any material fact concerning the Plaintiff’s case against Defendant JENNIE E. BAESE, and that complete Summary Judgment is therefore granted to JENNIE E. BAESE.”

Ms. Range subsequently filed a motion to alter or amend the summary judgments, which was denied by the trial court after a hearing in an order dated January 6, 2006. Ms. Range immediately filed a notice of appeal. Her estate now challenges the trial court’s granting of summary judgment to Ms. Baese and Ms. Anderson.

### ANALYSIS

Unfortunately, this Court has concluded that we cannot reach the underlying merits of this case due to multiple deficiencies in the record on appeal.

At the time of the hearing in this case, Rule 56.04 of the Tennessee Rules of Civil Procedure provided, in pertinent part:

Subject to the moving party’s compliance with Rule 56.03, the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Upon request, the trial court shall state the legal grounds upon which the court grants the motion, which shall be included in the order reflecting the court’s ruling.<sup>1</sup>

---

<sup>1</sup>We note that Tenn. R. Civ. P. 56.04 was amended in 2007. The rule now provides, in pertinent part, that, “The trial court shall state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court’s ruling.”

The standard of review for motions for summary judgment is set forth as follows in *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83 (Tenn. 2000):

Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met.

*Staples*, 15 S.W.3d. at 88.

At the time of the hearing in this case, Tenn. R. Civ. P. 56.04 required a trial court, "upon request," to state the legal grounds for its grant of summary judgment and to include those grounds in its order. Despite a request by plaintiff's counsel for findings of fact and conclusions of law, the trial court's orders do not state the legal basis for granting the defendants' motions for summary judgment. Contrary to the trial judge's response to plaintiff's counsel, the transcript of the hearing does not contain findings by the trial court. We find that the trial court erred in failing to state the legal basis for its grant of summary judgment. In such cases, appellate courts will often "soldier on without guidance from the trial court." *Church v. Perales*, 39 S.W.3d 149, 158 (Tenn. Ct. App. 2000). However, as discussed below, the inadequacy of the record prevents this. Thus, the case must be remanded for the trial court to comply with Tenn. R. Civ. P. 56.04 and for the parties to ensure the preparation of an adequate record.

Given the deficiencies in the record in this case, it is necessary to consider the parties' obligations to provide an appropriate record for appellate review. Tenn. R. App. P. 24 governs the contents and preparation of the record on appeal. A perusal of Rule 24 clearly shows that the appellant has the primary role in determining the contents of the record. Case law under Rule 24 supports this conclusion: "An appellant has the responsibility to prepare a fair, accurate, and complete record on appeal." *Jennings v. Sewell-Allen Piggly Wiggly*, 173 S.W.3d 710, 713 (Tenn. 2005). See also *Church v. Perales*, 39 S.W.3d 149 at 160. However, particularly when summary judgment is granted in its favor, an appellee also has some responsibility for the adequacy of the record. *Jennings*, 39 S.W.3d at 713; *Svacha v. Waldens Creek Saddle Club*, 60 S.W.3d 851 (Tenn. Ct. App. 2001).

In *Jennings*, the Supreme Court was presented with a situation similar to this case. In an order granting summary judgment in favor of the defendants, the trial judge stated only that, based upon the motion, the plaintiff's response, depositions, and the entire record, "it appears to the Court that there is no genuine issue as to any material facts and therefore the Motion of the Defendant should be granted." *Jennings*, 173 S.W.3d at 712. The record did not contain a memorandum of law or a transcript of the hearing. After acknowledging an appellant's responsibility to provide the appellate court with a "'fair, accurate, and complete account' of what transpired at the trial level," the court stated, "The appellee, however, shares the responsibility for ensuring the appellate court has a complete record." *Jennings*, 173 S.W.3d at 713 (quoting *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993), and citing Tenn. R. App. P. 24(a), (b), (d)). Following the reasoning applied in *Svacha v. Waldens Creek Saddle Club*, 60 S.W.3d at 851, the court concluded that:

Sewell-Allen has a responsibility to ensure the appellate record is sufficient to determine if the trial court's summary judgment in its favor was proper. In this case the record is incomplete, and we are unable to determine the basis for the judgment entered by the trial court. We refuse to "perform the equivalent of an archeological dig and endeavor to reconstruct the probable basis for the [trial] court's decision."

*Jennings*, 173 S.W.3d at 713 (quoting *Church v. Perales*, 39 S.W.3d 149, 157 (Tenn. Ct. App. 2000)).

In *Svacha*, the trial court granted summary judgment in favor of the defendants based in part upon the plaintiff's testimony. No transcript of the plaintiff's testimony was included in the record on appeal. In vacating the trial court's order, the court stated that the defendant, the Rule 56 movant, had a responsibility to make sure the transcript considered by the court was filed with the court. *Svacha*, 60 S.W.3d at 856 (citing Tenn. R. Civ. P. 56.04).

Following the reasoning of *Jennings* and *Svacha*, we are inclined to conclude that, given the failure of the appellant to provide an adequate record, the appellees should have made sure that the record contained all proof considered by the court in granting their motions for summary judgment. This evidence would then be part of the record on appeal, so this court could perform its duty. The record on appeal does not contain the motion for summary judgment of defendant Baese or defendant Anderson. There is a memorandum in support of a motion for summary judgment from Ms. Anderson, but none for Ms. Baese. There are two affidavits labeled Exhibits 4 and 5 that are not associated with any motion. Furthermore, at the hearing, the attorneys and the trial judge made reference to facts gleaned from depositions, but no depositions are included in the record on appeal. The court's orders refer to affidavits, but this Court cannot assume from the fragmented state of the record that all of the affidavits are before us. Moreover, the appellants' brief cites to the depositions of Ms. Range, Ms. Baese, and Ms. Anderson; "Pl.'s Stmt.," and an affidavit of Ms. Range. None of these documents are contained in the record on appeal.<sup>2</sup>

The record in this case prevents the court from evaluating the propriety of the trial court's decision to grant summary judgment. We cannot determine whether there were issues of material fact or whether the defendants were entitled to judgment as a matter of law. Normally, we would remand this matter for supplementation of the record; however, as previously noted, we have determined that the trial judge erred by failing to state the legal basis for the grant of summary judgment. We, therefore, vacate the trial court's orders granting summary judgment and remand for the trial court to state the legal grounds for the ruling and for the preparation of a fair, accurate and complete record on appeal.

---

<sup>2</sup>This court's efforts were not assisted by the briefs in this case. The appellants' brief does not include a statement of facts, as required under Tenn. R. App. P. 27. Instead, the brief states: "In the underlying pleadings, plaintiff filed an extensive statements [sic] of fact with supporting affidavits and transcripts, which form the basis for the facts relied on in this appeal and are incorporated as if reiterated here, *verbatim*." A mere reference back to the pleadings does not satisfy the requirements of Rule 27. Moreover, we find no extensive statement of facts or affidavits on behalf of the plaintiff in the record. The appellees' briefs frequently do not give references to pages in the record.

Costs of appeal are assessed equally against the appellants and the appellees, for which execution may issue if necessary.

---

ANDY D. BENNETT, JUDGE